

# Exhibit B

**Vose, Charles**

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**From:** Vose, Charles  
**Sent:** Wednesday, January 09, 2008 4:04 PM  
**To:** 'James Higa'; Catherine Duoat  
**Subject:** RE: Second Amended Complaint

With that understanding, I am fine with that. I will of course accept service for the defendants I represent.

Charles Vose

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**From:** James Higa [mailto:[jhiga@burnhambrown.com](mailto:jhiga@burnhambrown.com)]  
**Sent:** Wednesday, January 09, 2008 4:02 PM  
**To:** Catherine Duoat; Vose, Charles  
**Subject:** RE: Second Amended Complaint

Sorry, I haven't had the opportunity to check my email until now. I presume, then, with the anticipated filing of a Third Amended Complaint, that we will not be required to file a responsive pleading to your Second Amended Complaint.

Thanks,  
James.

-----Original Message-----

**From:** Catherine Duoat [mailto:[cat@theaccidentallawyer.com](mailto:cat@theaccidentallawyer.com)]  
**Sent:** Wednesday, January 09, 2008 3:33 PM  
**To:** Vose, Charles; James Higa  
**Subject:** Re: Second Amended Complaint

I will file a third amended complaint that will be the same as the first amended complaint except it will name Bernard Ortiz.

Thanks,

Catherine

----- Original Message -----

**From:** Vose, Charles  
**To:** Catherine Duoat ; James Higa  
**Sent:** Wednesday, January 09, 2008 3:29 PM  
**Subject:** RE: Second Amended Complaint

I'm not sure if I understand exactly what you are proposing. If you are going to file a Third Amended Complaint that will delete the Ninth Cause of Action so that the Third Amended Complaint will mirror the First Amended Complaint with the exception being that the Third Amended Complaint names Sgt. Ortiz, then I am fine with that, assuming we have an agreement that we are not obligated to file a responsive pleading to the Second Amended Complaint and will instead file an answer to the Third Amended Complaint.

Of course I do not know Mr. Higa's position on this.

Please let me know.

Charles Vose

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**From:** Catherine Duoat [mailto:[cat@theaccidentallawyer.com](mailto:cat@theaccidentallawyer.com)]

**Sent:** Wednesday, January 09, 2008 2:00 PM

**To:** Vose, Charles

**Subject:** Re: Second Amended Complaint

I think it would be easier if you stipulate to allow us to file a third amended complaint so we can delete the Ninth Cause of Action as opposed to a formal dismissal of that claim.

Thanks,

Catherine

----- Original Message -----

**From:** Vose, Charles

**To:** Catherine Duoat

**Cc:** James Higa

**Sent:** Wednesday, January 09, 2008 11:34 AM

**Subject:** Second Amended Complaint

Catherine - Upon reviewing your Second Amended Complaint, it appears you have improperly added a new Cause of Action as the Ninth Cause of Action for "42 U.S.C. sec. 1983 Negligent Selection, Training, Retention, Supervision, Investigation, and Discipline". Under F.R.C.P. 15(a), once a responsive pleading has been filed, you must have have a stipulation of the parties or seek leave of the court to amend a pleading. Defendants' answer filed on or about September 17, 2007 is that responsive pleading.

While you had the right to amend the complaint to add Sgt. Ortega in place of one of the Doe defendants, that did not include the right to add a new cause of action.

As a response to the Second Amended Complaint is due shortly, please let me know whether you intend to dismiss this new cause of action. Otherwise the city will be forced to file a Motion to Strike under Rule 12.

Charles Vose

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